

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

TERRIE FUCHS

APPELLANT,

**v.
DEPARTMENT OF REVENUE**

RESPONDENT.

DOCKET NUMBER WD77155

DATE: August 26, 2014

Appeal From:

Cole County Circuit Court
The Honorable Patricia S. Joyce, Judge

Appellate Judges:

Division Four: Alok Ahuja, Chief Judge, Presiding, Cynthia L. Martin, Judge and Randall R. Jackson, Special Judge

Attorneys:

Carla G. Holste, Jefferson City, MO, for appellant.

Brandon D. Laird, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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v.

DEPARTMENT OF REVENUE,

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No. WD77155

Cole County

Before Division Four: Alok Ahuja, Chief Judge, Presiding, Cynthia L. Martin, Judge and Randall R. Jackson, Special Judge

Terrie Fuchs appeals from the trial court's entry of summary judgment in favor of her employer, the Department of Revenue, in her disability discrimination lawsuit. Fuchs argues that the trial court erred in entering summary judgment because it failed to view the facts in the light most favorable to Fuchs and because it erroneously declared and applied the law regarding her claim of discriminatory harassment.

REVERSE AND REMAND.

Division Four holds: A successful claim of hostile work environment discriminatory harassment requires proof that: (1) the plaintiff is a member of a group protected by the Missouri Human Rights Act; (2) the plaintiff was subjected to unwelcome group harassment; (3) the plaintiff's membership in the protected group was a contributing factor in the harassment; and (4) a term, condition, or privilege of the plaintiff's employment was affected by the harassment. Specific, discrete, adverse employment actions are not the only means by which a claimant can prove that a term, condition, or privilege of employment has been affected. Instead, discriminatory harassment that is severe or pervasive enough to alter the conditions of a plaintiff's employment and creates an abusive working environment suffices to affect a term, condition, or privilege of employment. The trial court committed legal error in requiring Fuchs to demonstrate that she could prove a specific, discrete, adverse employment action to establish her claim of discriminatory harassment based on a hostile work environment.

The trial court also erred in concluding that Fuchs could not establish a triable issue with respect to whether her employer's harassing conduct was sufficiently severe or pervasive. Harassing conduct must be sufficiently severe or pervasive both as viewed subjectively by the plaintiff and viewed objectively by a reasonable person. Fuchs testified in a deposition regarding the intimidation, ridicule, and insults she endured from her supervisor so that Fuchs's deposition testimony alleged conduct by the employer that she subjectively viewed as severe or pervasive enough to alter the conditions of her employment. Once subjectively offensive conduct is established, whether a reasonable person would objectively consider an employer's behavior toward an employee sufficiently severe or pervasive to alter the conditions of a plaintiff's employment is largely a question of fact for the jury.

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